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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 26

GEORGE W. McCANDLESS, AS RECEIVER OF DUQUESNE GAS CORPORATION, PETITIONER,

vs.

MAXIME H. FURLAUD, KINGSTON CORPORATION, BYRON CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 18, 1935.

CERTIORARI GRANTED MAY 13, 1935.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

GEORGE W. McCANDLESS, as Receiver of Duquesne Gas Corporation, Complainant-Appellee-Appellant,

against

MAXIME H. FURLAUD and KINGSTON CORPORATION, Defendants-Appellants-Appellees,

and

BYRON CORPORATION and CHAUCER CORPORATION, Defendants-Appellees,

and

CARLOS REUTER, Defendant

(Cross Appeals)

STATEMENT UNDER RULE XIII.

This action was commenced by the service of a subpœna and bill of complaint on all of the above-named defendants with the exception of the defendant Carlos Reuter on March 24th, 1932.

Carlos Reuter was not served nor did he appear in the above action.

An amended bill of complaint was served and filed on or about the 3rd day of May, 1932.

[fol. 2] The defendants herein moved under equity Rule 20 to compel the complainant to make a further and better statement of the nature of the claim set forth in the amended bill of complaint.

An order was entered on or about the 23rd day of June, 1932 denying the application made on behalf of the defendants under equity Rule 20. The said order was signed by the Hon. Francis G. Caffey, one of the Justices of the United States District Court for the Southern District of New York.

On or about the 5th day of June, 1932, the above-named defendants except Reuter filed their respective answers to the amended bill of complaint herein.

The complainant is George W. McCandless, as Receiver of the Duquesne Gas Corporation.

Ehrich, Royall, Wheeler & Walter are the solicitors for the complainant.

The defendants are Maxime H. Furlaud, Kingston Corporation, Byron Corporation, Chaucer Corporation.

Eppstein & Hirshfield are the solicitors for the said defendants.

There has been no change of parties or attorneys since the commencement of this action.

The trial commenced before the Hon. John C. Knox, District Court Judge sitting in the United States District Court for the Southern District of New York on the 9th day of November, 1932.

A decree was made on the 11th day of May, 1933 and entered on the 12th day of May, 1933 in the sum of $1,834,640.08 together with costs and disbursements, in favor of the complainant and against the defendants, Maxime H. [fol. 3] Furlaud and Kingston Corporation and dismissing the bill of complaint as to the defendants Byron Corporation and Chaucer Corporation on the merits without costs.

The notice of appeal of the defendants, Kingston Corporation and Maxime H. Furlaud, together with assignment of errors, bond for costs and the citation were filed on the 19th day of July, 1933 and the appeal was allowed on the said day.

The bond for costs was approved on the 20th day of July, 1933.

The notice of appeal of the complainant, together with assignment of errors, bond for costs and the citation were filed on the 9th day of August, 1933, and the appeal was allowed on the 10th day of August, 1933.

The bond for costs was approved on the 10th day of August, 1933.

[fol. 4] IN UNITED STATES DISTRICT COURT

SUBPŒNA

E66—185

The President of the United States of America, to Maxime H. Furlaud, Carlos Reuter, Kingston Corporation, Byron Corporation and Chaucer Corporation, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in Equity, by George W. McCandless, as receiver of Duquesne Gas Corporation and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of Two Hundred and fifty Dollars ($250).

Witness, Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, on the 23 day of March in the year One Thousand Nine Hundred and Thirty-two and of the Independence of the United States the One Hundred and Fifty-sixth.

(Signed) Charles Weiser, Clerk.

Ehrich, Royall, Wheeler & Walter, Sol'rs.

The defendants are required to file their answers or other defense in the above cause in the Clerk's office on or before the twentieth day after service hereof excluding the day of said service, otherwise the bill aforesaid may be taken pro confesso.

(Signed) Charles Weiser, Clerk. (Seal.)

[fol. 5] In United States District Court, Southern District of New York

In Equity. No. 66-185

George W. McCandless, as Receiver of Duquesne Gas Corporation, Complainant,

against

Maxime H. Furlaud, Carlos Reuter, Kingston Corporation, Byron Corporation and Chaucer Corporation, Defendants.

Amended Bill of Complaint

To the Honorable the Judge of the District Court of the United States for the Southern District of New York:

The complainant, as Receiver of Duquesne Gas Corporation, brings this, his amended bill of complaint, and alleges:

First: That this is a suit of a civil nature wherein the amount in controversy exclusive of interests and costs is in excess of the sum of $3,000.

Second: That the complainant is a resident of the City of Pittsburgh, and a resident and citizen of the Commonwealth of Pennsylvania; that Duquesne Gas Corporation is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania having its principal office in the City of Washington, Commonwealth of Penn-[fol. 6] sylvania, which lies within the territorial limits of the United States District Court for the Western District of Pennsylvania.

Third: Upon information and belief that defendants Maxime H. Furlaud and Carlos Reuter are residents of the County of New York and of the Southern District of New York; that defendant Kingston Corporation is a corporation organized under the laws of the State of New Jersey; that defendant Byron Corporation is a corporation organized under the laws of the State of Delaware; and that defendant Chaucer Corporation is a corporation organized under the laws of the State of Delaware.

Fourth: That by an order duly made in the United States District Court, in and for the Western District of Pennsyl-

vania, upon the 19th day of January, 1932, in a suit in equity, entitled "Frank T. Harrington, Plaintiff, against Duquesne Gas Corporation, Defendant", in Equity No. 2554, which suit was consolidated with a suit entitled "Central Hanover Bank and Trust Company, as Trustee under First Mortgage of Duquesne Gas Corporation, dated as of March 15, 1930, Plaintiff against Duquesne Gas Corporation, Defendant", In Equity No. 2577, the complainant herein was appointed Receiver of all the assets and property, including choses in action of said Duquesne Gas Corporation, and the complainant has duly qualified and is now acting as such Receiver; that upon petition of the complainant as such Receiver duly filed in the United States District Court, in and for the Southern District of New York, an order was duly made on the 23rd day of March, [fol. 7] 1932, by said last mentioned Court appointing said complainant, George W. McCandless, as Ancillary Receiver of Duquesne Gas Corporation, which last mentioned order duly authorized the complainant, as such Receiver, to bring this suit, and the complainant has duly qualified and is now acting as such Ancillary Receiver.

Fifth: Upon information and belief that on or about the 18th day of July, 1928, a corporation was organized under the laws of the State of New York named Furlaud & Company, Inc. the name of which was later changed to Furlaud, Reuter & Company, Incorporated and later changed to Winchelsea Holding Corporation, and a certificate of dissolution of which was filed on the 27th day of October, 1931; that defendants Maxime H. Furlaud, Carlos Reuter and/or their mere nominees or dummies were at all times the only stockholders of said corporation in this paragraph mentioned, and that they and/or their mere nominees or dummies were at all times the directors of said corporation, and that at the time of the filing as aforesaid of the certificate of dissolution of said corporation, said defendants Furlaud, Reuter and/or their mere nominees or dummies were all of the directors and stockholders of the corporation in this paragraph mentioned.

Sixth: Upon information and belief that the certificate of incorporation of said Duquesne Gas Corpartion was filed in the office of the Secretary of the Commonwealth of Pennsylvania on the 13th day of February, 1930, and since

the completion of its organization shortly after that date has owned and operated natural gas wells, pipe lines and other property incidental thereto, all situated in the West-
[fol. 8] ern District of the State of Pennsylvania; the organization of said Duquesne Gas Corporation was brought about by the defendants Maxime H. Furlaud and Carlos Reuter, and they acted as and were the promoters of such corporation. One Randolph C. Coleman, one McLane Tilton and one Frank A. Cabeen, Jr. were the original directors named in the certificate of incorporation and acted as such directors until the 7th day of April, 1930; said Coleman, Tilton and Cabeen were the mere nominees of defendants Furlaud and Reuter, and in all the acts which they performed as directors of said Duquesne Gas Corporation they acted merely at the behest of and under the instructions of said Furlaud and said Reuter. One Otto E. Schuller, one Thomas W. D. Duke, one Henry T. Wynn and one Charles C. Henderson, together with the defendants Furlaud and Reuter became directors of said Duquesne Gas Corporation on the 7th day of April, 1930, on which date said Coleman, Tilton and Cabeen resigned and ceased to act as directors. Said Schuller was an employee of defendants Furlaud and Reuter or of said corporation, sometimes known as Furlaud & Company, Inc. Said Duke was employed as an attorney at law by the defendants Furlaud and Reuter to draw the papers in carrying out the various proceedings herein alleged. They, as well as the said Wynn and Henderson, were the mere nominees of the defendants Furlaud and Reuter in acting as such directors and in all the steps taken by them as such directors they acted under the instructions and at the behest of said defendants Furlaud and Reuter.

Seventh: Upon information and belief that during or about the months of March and April 1930, defendants Fur-
[fol. 9] laud and Reuter caused such steps to be taken by said Duquesne Gas Corporation as to bring about the authorization of a first mortgage of $4,000,000 securing an issue of $4,000,000 of first mortgage bonds of Duquesne Gas Corporation, an indenture covering the issue of $1,000,000 of so-called Convertible 6½% Secured Gold Notes and the issuance of 675,000 shares of no par value common stock.

Eighth: Upon information and belief that during or about the months of March and April 1930, the defendants

Furlaud and Reuter acting through the above described corporation, then known as Furlaud & Company, Inc., made, as the banking house of issue, a public offering of the $4,000,000 of said bonds at the offering price of 97½ and a public offering of the $1,000,000 of the said notes at 98, and through such banking house of said Furlaud & Company, Inc. stated in a bond circular publicly issued and advertised by them that, in the case of said bonds "These bonds were issued by the corporation in connection with the acquisition of properties and to provide cash for developments, extensions and other corporate purposes", and in the case of said notes that "These notes are issued by the corporation in connection with the acquisition of properties and to provide cash for developments, extensions and other corporate purposes"; that as a result of the steps so taken by the defendants Furlaud and Reuter at the time aforesaid, or shortly thereafter, the whole amount of said $4,000,000 of said bonds and of said $1,000,000 of said notes were issued and distributed to the public at said prices or at prices approximating the same, or at an aggregate purchase price for said bonds of approximately $3,900,000 and [fol. 10] of said notes of $980,000, or at an aggregate sales price for both said bonds and notes of approximately $4,880,000.

Ninth: Upon information and belief that at the time of the issuance, sale and distribution of said bonds and notes by the defendants Furlaud and Reuter, as aforesaid, said last mentioned defendants had made arrangements for the acquisition for said Duquesne Gas Corporation of various natural gas wells and properties situated in Southwestern Pennsylvania; that the aggregate price of said properties so arranged to be acquired for Duquesne Gas Corporation was $2,572,989; that during or about the month of April 1930, said gas properties were conveyed by the various owners thereof to said Duquesne Gas Corporation in consideration of the payment by Duquesne Gas Corporation of sums of money as the various purchase prices thereof aggregating the said sum of $2,572,989; that said sum of $2,572,989 was paid out of the proceeds of the sale of said bonds and notes.

Tenth: Upon information and belief that except for the payment as aforesaid for the benefit of said Duquesne Gas Corporation of the said sum of $2,572,989 and except also

for the payment into the treasury of said Duquesne Gas Corporation out of the proceeds of the sale of said bonds and notes of the sum of $365,000, and except for the payment out of the proceeds of the sale of such bonds and notes of such amount as may be considered a legitimate bankers' commission for the distribution and sale of said bonds and notes, and as may be considered proper organization expenses for the organization of Duquesne Gas Corporation, [fol. 11] said Duquesne Gas Corporation received nothing either directly or indirectly out of the approximately $4,880,000, which was the proceeds of the sale of said bonds and notes.

Eleventh: That the defendants Furlaud and Reuter caused all of the proceeds of the sale of said bonds and notes beyond the amount of said sum of $2,572,989 plus said sum of $365,000 (other than the legitimate bankers' commissions for the sale of said bonds and notes and legitimate expenses of organization of said corporation) to be diverted from the Duquesne Gas Corporation for whose use and benefit the proceeds of the sale of said bonds and notes was intended and defendants Furlaud and Reuter fraudulently misappropriated said moneys to their own use.

Twelfth: That defendants Furlaud and Reuter caused said Duquesne Gas Corporation to issue to them or to their nominees or dummies, including the defendants Kingston Corporation, Byron Corporation and Chaucer Corporation, 675,000 shares of the capital stock of said Duquesne Gas Corporation and sold 85,000 shares thereof in the name of defendants Byron Corporation and Chaucer Corporation for the sum of $850,000 cash, which sum of $850,000 was retained by the defendants Furlaud and Reuter and converted to their own uses through the agency of said last two mentioned defendant corporations.

Thirteenth: Upon information and belief that said Duquesne Gas Corporation has received out of the proceeds of the sale of said bonds and said notes, as well as out of the sale of said 85,000 shares of stock, or in consideration for the issuance of the balance of said 675,000 shares of stock, [fol. 12] nothing whatsoever except that, as aforesaid, it received the title to the gas properties purchased for it by defendants Furlaud and Reuter at a cost of $2,575,989 and $365,000 of working capital and whatever benefits arose

from the organization of the corporation and from the services of the defendants in selling its securities.

Fourteenth: Upon information and belief that defendants Furlaud and Reuter were the promoters of said Duquesne Gas Corporation; that they caused it to be organized; that all the steps which were taken for the consummation of its incorporation, organization, issuance of its said bonds, notes and stocks were taken under the direction and at the behest of defendants Furlaud and Reuter; that they stand in a fiduciary relation to said Dequesne Gas Corporation; that defendants Furlaud and Reuter are accountable to the corporation for the proceeds derived from the issuance and sale by them as aforesaid of all of said securities of said corporation.

Fifteenth: Upon information and belief that the moneys diverted by defendants Furlaud and Reuter from the proper uses of said Duquesne Gas Corporation and misappropriated by defendants Furlaud and Reuter (even after the allowance of a fair and proper banking commission for the sale of said securities and after a fair and proper allowance for the expenses of the organization of Duquesne Gas Corporation) is not less than $2,500,000.

Sixteenth: Upon information and belief that the follow-
[fol. 13] ing were some of the additional steps taken by defendants Furlaud and Reuter in connection with the organization of said Duquesne Gas Corporation, the acquisition of its said gas properties and the issuance of its said securities and the diversion and misappropriation of its funds:

Defendants Furlaud and Reuter caused to be organized under the laws of the State of New Jersey the defendant Kingston Corporation, of which corporation they or their mere nominees or dummies were the only stockholders and of which they or their mere nominees or dummies were the only directors and officers; that defendants Furlaud and Reuter also caused to be organized under the laws of the State of Delaware the defendant Byron Corporation, that the stockholders of said Byron Corporation were defendants Furlaud and Reuter or mere nominees and dummies of Furlaud and Reuter, and the directors and officers of said Byron Corporation were mere nominees or dummies of said Furlaud and Reuter; that defendants Furlaud and

Reuter also caused to be organized under the laws of the State of Delaware the defendant Chaucer Corporation, that the stockholders of said Chaucer Corporation were defendants Furlaud and Reuter or mere nominees and dummies of Furlaud and Reuter, and the directors and officers of said Chaucer Corporation were mere nominees or dummies of said Furlaud and Reuter; that option agreements for the purchase of the various gas properties which were acquired as aforesaid for said Duquesne Gas Corporation were taken in the name of defendant Kingston Corporation, the sum total of which option prices was $2,572,989; that defendants Furlaud and Reuter also caused a contract to be [fol. 14] made between said corporation, sometimes known as Furlaud & Company, Inc., and Duquesne Gas Corporation for the sale by Duquesne Gas Corporation to said Furlaud & Company, Inc. of $2,700,000 of said bonds and $1,000,000 of said notes, the contract price being 90 for said bonds and 88 for said notes, or an aggregate contract price of $3,310,000; that before the issuance and delivery of said bonds and notes which were sold as aforesaid, defendants Furlaud and Reuter arranged with the sellers of the several properties (the optioners) that such sellers or optioners should deposit in escrow in various banks situated in several towns in Western Pennsylvania convenient to the optioners, title papers conveying direct to Duquesne Gas Corporation said several gas properties under escrow agreements providing that upon drafts upon the Duquesne Gas Corporation for the respective purchase prices being taken up and paid, said title papers should be definitely delivered; that the date for definitive deliveries and the payment of the respective purchase prices was adjourned from time to time to correspond with the date for the delivery to various investment houses under the bankers syndicate for the sale of said bonds and notes and the receipt of the purchase price of said securities; that on the 7th day of April, 1930, delivery was made of a large part of said bonds and all of said notes and on that day drafts were taken up and paid out of the proceeds of the sale of said bonds and notes for the purchase price of said several gas properties; that the amount of the purchase price of said several gas properties was said sum of $2,572,989; that under date of April 7, 1930, a written paper called "Agreement of Reorganization between Duquesne Gas Corpora-

[fol. 15] tion and Kingston Corporation of New Jersey" was signed, which bears the signatures of "Kingston Corporation by M. A. Furlaud, President, attested Robert Halporn, Assistant Secretary" and of Duquesne Gas Corporation by Walter G. Krog, Vice-President, by Robert Halporn, Assistant Secretary"; that said Krog and Halporn were both employees of defendants Furlaud and Reuter or of said corporation hereinabove described, sometimes known as Furlaud & Company, Inc.; that under said so-called agreement of reorganization for an alleged consideration of the transfer by defendant Kingston Corporation to said Duquesne Gas Corporation of said gas properties, said Duquesne Gas Corpporation agreed to pay $3,015,000 stated to be the amount which defendant Kingston Corporation would be obligated to pay at the Central Hanover Bank and Trust Company and by which said Duquesne Gas Corporation also agreed to issue and deliver to said Kingston Corporation 535,000 shares of its common stock and $1,300,000 in principal amount of its 6% Mortgage Convertible Gold Bonds; that soon thereafter defendant Kingston Corporation went through the form of granting options to various employees or dummy corporations of defendants Furlaud and Reuter or of said corporation, sometimes called Furlaud & Company, Inc., for the purchase at 50c a share of 510,000 shares of said capital stock of said Duquesne Gas Corporation, which so-called options were then caused by defendants Furlaud and Reuter to be assigned to the extent of 225,000 shares each to defendants Byron Corporation and Chaucer Corporation; immediately or soon after the 7th day of April, 1930, defendants Furlaud and Reuter caused defendant Kingston Corporation to go through the [fol. 16] form of declaring a dividend in kind to its stockholders of said $1,300,000 in face amount of bonds of Duquesne Gas Corporation and 25,000 shares of the capital stock of Duquesne Gas Corporation; that defendants Furlaud and Reuter caused the original 1,000 shares of the capital stock of said Duquesne Gas Corporation to be subscribed for by three individuals who are mere nominees or dummies of defendants Furlaud and Reuter, which subscriptions were assigned to said corporation sometimes known as Furlaud & Comapny, Inc., and defendants Furlaud and Reuter caused a subscription for 139,000 additional shares to be made by said Furlaud & Company, Inc.,

and accepted by Duquesne Gas Corporation at 50c a share, or a total of 140,000 shares; that thereafter defendants Furlaud and Reuter acting through defendants Byron Corporation and Chaucer Corporation sold 85,000 of said last mentioned shares at $10 a share to one J. J. Bergen for the total sum of $850,000 in cash and as an incident thereto caused said shares of stock to be listed on the New York Curb market; that the purchase price of $850,000 for said 85,000 shares of stock was received to the extent of $425,000 thereof by defendant Byron Corporation and to the extent of $425,000 thereof by defendant Chaucer Corporation; that thereafter defendants Furlaud and Reuter organized what is known as the Secondary Syndicate for the sale of $1,300,000 in face amount of the bonds of Duquesne Gas Corporation which were received by them as above stated through the mechanism of said Kingston Corporation; that said additional bonds were to be sold by the distributing group of security dealers organized by the defendants to public investors at the price then (August 1930) [fol. 17] prevailing on the New York Curb for such bonds which was about 86; that all of said additional $1,300,000 of bonds were sold at about that time and about that price less a commission to dealers varying from two to four points according to the amount of bonds placed by such dealers and that defendants Furlaud and Reuter either directly or through said corporation, sometimes known as Furland & Company, Inc. received from the proceeds of the sale thereof the sum of approximately $1,100,000.

Seventeenth: That the complainant, as Receiver, is entitled on behalf of Duquesne Gas Corporation to have the defendants account to the corporation for the funds or moneys coming into their hands or into the hands of any of them or their agents or representatives from the sale of the securities of said Duquesne Gas Corporation or of any of said securities, and for the disposition made of such funds or moneys and to make restitution for any or all of such funds or moneys wrongfully diverted from Duquesne Gas Corporation and misappropriated or converted by the defendants or any of them to their own uses and for any or all secret or excessive profits taken or retained by them or any of them; that your complainant has no adequate remedy at law and your complainant's rights may only be properly adjudicated in this Court of Equity.

Wherefore, your complainant prays as follows:

I. That the defendants Maxime H. Furlaud, Carlos Reuter, Kingston Corporation, Byron Corporation and Chaucer Corporation, and each of them, be compelled and required to account to said Duquesne Gas Corporation and [fol. 18] to complainant as Receiver of said Duquesne Gas Corporation for all funds or moneys coming into the hands of them or any of them or of the agents or representatives of any of them or in the hands of any one else acting with or for them from the sale of the bonds, notes and shares of stock of said Duquesne Gas Corporation.

II. That the Court shall decree the payment by the defendants and each of them to the complainant as Receiver of Duquesne Gas Corporation of such sum or sums of money as said Duquesne Gas Corporation or your complainant as its Receiver shall appear upon such account to be entitled.

III. The complainant prays for such other and further relief as to the Court appears to be just.

IV. That process of subpœna issue herein in due course directed to the defendants herein and each of them.

Ehrich, Royall, Wheeler & Walter, Solicitors for the Complainant, Office & P. O. Address, 20 Exchange Place, Borough of Manhattan, New York City. Ralph Royall and Clark Miller and William A. Magee, of Pittsburgh, of Counsel.

(Verified on April 27, 1932, by George W. McCandless.)

[fol. 19] In United States District Court, Southern District of New York

[Title omitted]

Order to Show Cause—Kingston Corporation

Upon the annexed affidavit of Ira W. Hirshfield verified the 19th day of May, 1932, and upon the amended bill of complaint annexed hereto, and upon all the proceedings heretofore had herein,

Now on motion of Eppstein & Hirshfield, solicitors for the defendant, Kingston Corporation, it is

Ordered that George W. McCandless, as Receiver of Duquesne Gas Corporation, the complainant herein, show cause before one of the Judges of the United States District Court in and for the Southern District of New York at a term thereof for the hearing of motions to be held in the old Post Office Building in the Borough of Manhattan, City of New York, Room 235, on the 24th day of May, 1932, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be [fol. 20] made herein requiring the complainant (1) to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint by separately stating and numbering the causes of action attempted to be set forth therein; (2) to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint herein by stating definitely and specifically the ultimate facts showing how it is claimed that the defendants Furlaud and Reuter caused the proceeds of the sale of the bonds and notes of the Duquesne Gas Corporation beyond the amount of $2,572,989.00 plus $365,000.00 (other than the legitimate bankers' commissions for the sale of said bonds and notes and legitimate expenses of organization of said corporation) to be diverted from the Duquesne Gas Corporation as alleged in paragraph "Eleventh" of the amended bill of complaint; (3) to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint herein by stating definitely and specifically the ultimate facts upon which it is claied that the defendants Furlaud and Reuter caused the proceeds of the sale of the bonds and notes of the Duquesne Gas Corporation, beyond the amount of $2,572,989. plus $365,000. (other than the legitimate bankers' commissions for the sale of said bonds and notes and legitimate expenses of organization of said corporation) to be fraudulently misappropriated as alleged in paragraph "Eleventh" of the amended bill of complaint; and (4) to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint herein by stating definitely and specifically [fol. 21] how it is claimed that the defendants Furlaud and Reuter misappropriated and diverted moneys from the

proper uses of the said Duquesne Gas Corporation as alleged in paragraph "Fifteenth" of the amended complaint; and it is further

Ordered that, sufficient cause appearing therefor, the time of the defendant Kingston Corporation to answer the amended complaint herein be and the same hereby is extended until ten days after the determination of this motion and the service of an order with notice of entry thereof upon the solicitors for the defendant, in the event that the motion is decided adversely to the defendant, with leave to said defendant on the hearing of this motion to apply for a further extension; and it is further

Ordered that service of a copy of this order to show cause and a copy of the affidavit hereto annexed upon the solicitors for the complainant on or before the 20th day of May, 1932, shall be deemed good and sufficient service.

Dated, New York, May 19th, 1932.

Francis G. Caffey, U. S. D. J.

[fol. 22] In United States District Court, Southern District of New York

[Title omitted]

Affidavit of Ira W. Hirshfield in Support of Order to Show Cause on Behalf of Kingston Corporation

State of New York,
County of New York, ss:

Ira W. Hirshfield, being duly sworn, deposes and says:

I am an attorney and counsellor at law of the State of New York and have been admitted to practice in the United States District Court for the Southern District of New York.

I am a member of the firm of Eppstein & Hirshfield, the solicitors for the above named defendants, with the exception of the defendant Carlos Reuter, who has not been served and who has not appeared.

I am familiar with all of the facts in the above entitled action.

This affidavit is made by me in support of an application on behalf of the defendant Kingston Corporation, pursuant

[fol. 23] to Rule 20 of the Equity Rules, for an order requiring the complainant herein to make a further and better statement of the nature of the claims contained in the amended complaint herein for the reasons hereinafter set forth.

On the 7th day of April, 1932, the defendants Furlaud, Kingston Corporation, Byron Corporation and Chaucer Corporation were served with subpœnas in the above matter. Subsequently, answers were interposed by the defendants, Furlaud and the Kingston Corporation, and an order to show cause was granted requiring the complainant to show cause why the action should not be dismissed in so far as Byron Corporation and Chaucer Corporation were concerned upon the ground that the said corporations were not doing business within the Southern District of New York.

Subsequently, the aforesaid motions were withdrawn and a stipulation was entered into extending the time of the said Byron Corporation and Chaucer Corporation to answer until the 30th day of April, 1932.

By an order to show cause dated the 26th day of April, 1932, and served upon the solicitors for the defendants above named on the 27th day of April, 1932, the complainant moved this Court for permission to serve an amended complaint. This application was granted upon consent of all parties and upon condition that the defendants be permitted to serve answers to the amended complaint or to make any motions with respect thereto within 20 days from the date of the service upon the solicitors for the defendant of the said amended complaint.

An amended complaint was served upon the solicitors for [fol. 24] the defendants on the 30th day of April, 1932, a copy of which is annexed hereto and made a part hereof as if set forth in full.

The amended complaint alleges that by an order of this Court, made on the 23rd day of March, 1932, the complainant was appointed ancillary receiver of the Duquesne Gas Corporation. The said order authorizes the complainant "to bring an action against the promoters of said corporation, including Maxime H. Furlaud and Carlos Reuter, for an accounting and for the restitution of funds fraudulently diverted and misappropriated and for secret and excessive profits".

It will thus be seen from the quoted portion of the order appointing the complainant ancillary receiver of the Duquesne Gas Corporation, that the receiver has been authorized to maintain two actions against the defendants herein:

(1) An action for the restitution of funds fraudulently diverted and misappropriated and (2) an action to recover secret and excessive profits.

This motion has been brought on to compel the complainant to make a further and better statement of the nature of the claim asserted in his amended complaint for the following reasons:

1. That the complainant has joined together in one cause of action two separate and distinct causes of action without any attempt on the part of the complainant to separately state and number them. This has resulted in the amended complaint being of such a character as to confuse the real issues involved and to make it impossible for the defendant to separate those allegations which relate to the claim for [fol. 25] the restitution of funds fraudulently diverted and misappropriated from the facts alleged with reference to the claim for secret and excessive profits.

2. That it appears from the amended complaint that the complainant has not complied with Rule 25 of the Equity Rules in that he has failed to make a short and simple statement of the ultimate facts upon which the complainant seeks relief. The complainant has pleaded conclusions of law rather than statements of ultimate facts insofar as he seeks to recover for misappropriation of funds belonging to the Duquesne Gas Corporation.

In order to more clearly understand the basis of the defendant's objection herein, an examination of the essential allegations of the amended complaint is requisite.

In Paragraph "Seventh" of the amended complaint, the complainant alleges that the defendants Furlaud and Reuter caused the Duquesne Gas Corporation to issue (1) a first mortgage of $4,000,000 to secure an issue of a like amount of first mortgage bonds, (2) an indenture covering the issue of $1,000,000 of convertible gold notes, and (3) 675,000 shares of common stock.

It is claimed that the defendants Furlaud and Reuter, acting through a corporation known as Furlaud & Company, Inc., made a public offering of the bonds and the notes and realized from the sale thereof $4,880,000. It is claimed that representations were made in the bond and note circulars that the securities in question were issued for various corporate purposes.

It is then asserted that out of the monies derived from the sale of these securities $2,572,989 was spent in acquiring, for the Duquesne Gas Corporation, various natural gas [fol. 26] wells and properties situated in Southwestern Pennsylvania and, in addition, $365,000 was paid into the treasury of the Duquesne Gas Corporation for working capital. The balance, less a legitimate bankers' commission and expenses of the organization of the Duquesne Gas Corporation, it is claimed, was fraudulently misappropriated by the defendants Furlaud and Reuter to their own uses.

It is then asserted that the individual defendants Furlaud and Reuter caused the Duquesne Gas Corporation to issue to them or their nominees 675,000 shares of the Common Stock of Duquesne Gas Corporation and that they subsequently sold 85,000 shares of this stock in the name of Byron Corporation and Chaucer Corporation for the sum of $850,000 which sum was retained by the defendants Furlaud and Reuter for their own use, through the agency of Byron and Chaucer Corporations.

The complainant then makes general allegations that the defendants Furlaud and Reuter misappropriated and diverted the funds belonging to the Duquesne Gas Corporation to the extent of at least $2,500,000.

Deponent respectfully contends that the allegations made by the complainant that the defendants Furlaud and Reuter and their so-called instrumentalities Furlaud & Company, Inc., Kingston Corporation, Byron and Chaucer Corporations, converted and misappropriated to their own uses funds of the Duquesne Gas Corporation, are not statements of ultimate facts as required by Rule 25 of the Equity Rules but are merely conclusions of law which do not properly apprise the defendants of the claim which the complainant is attempting to assert against them.

[fol. 27] From the allegations appearing in the amended complaint, the defendant does not know whether the com-

plainant is accusing the defendants of direct theft of the funds in question or whether the complainant has some other type of fraudulent and guilty conduct in mind. In fact, the amended complaint makes confusion more confounded when we examine paragraph "Sixteenth" wherein it is alleged that "the following were some of the additional steps taken by the defendants, Furlaud and Reuter, in connection with the organization of the said Duquesne Gas Corporation, the acquisition of its said gas properties and the issuance of its said securities and the diversion and misappropriation of its funds."

In paragraph "Sixteenth", there is not a single allegation that reveals any fraud on the corporation or any misappropriation of funds. The only question presented is one of promoters' profits. It is impossible for the defendant to know from the amended complaint whether the complainant intends on the trial to charge a fraudulent diversion of funds or merely a situation of promoters' profits. This state of affairs requires a better statement by the complainant of its claim and a statement of ultimate facts rather than conclusions of law as required under Rule 25 of the Equity Rules.

The complainant in paragraph "Sixteenth" apparently has attempted to show that through the instrumentality of various corporations the individual defendants, Furlaud and Reuter, succeeded in obtaining for themselves very large promoters' profits. He has set forth in detail the various steps claimed to have been taken by the individual defendants and their so-called controlled corporations to [fol. 28] enable the individual defendants to realize this alleged profit. These allegations tend to charge that all of the profits claimed to have been realized were derived from the sale of securities of the Duquesne Gas Corporation acquired by Furlaud and Reuter and their so-called nominees. No suggestion is made in that paragraph which intimates that the defendants had been guilty of any fraudulent practices whatsoever or that they had misappropriated or diverted funds of the corporation.

Any attempt by the defendant to answer the amended complaint herein is difficult. The complainant has alleged misappropriations and diversions. There are allegations in paragraph "Sixteenth" of the amended complaint which attempt to set forth all of the steps by which all of the

bonds, notes and stock of the Duquesne Gas Corporation were acquired. We cannot determine from this paragraph whether these are the alleged ultimate facts upon which complainant relies to show fraudulent diversion and misappropriation of funds or whether they are relied on solely to show promoters' profits. It, therefore, becomes very essential for the complainant to make a better statement of his case and to properly apprise the defendant as to just what the diversions and/or misappropriation consist of.

The defendant contemplates bringing on a motion to dismiss the amended bill herein on the ground that it does not state facts sufficient to constitute a cause of action against the defendant, but hesitates to do so unless the complainant is required to make a further and better statement of his case because some of the general (and improperly pleaded) allegations might prevent the granting of such an application.

In the case of Rogers v. Hill, 53 Fed. (2nd) 395, decided [fol. 29] by Mr. Justice Woolsey, one of the District Judges for the Southern District of New York, the Court in granting a motion similar to this one stated at page 398:

"The purpose of this motion (made under Equity Rule 20) is to get the plaintiff so to allege his cause of action as to enable a motion for judgment on the pleadings to be made by the defendants, and thus to test the validity, as a matter of law, of the by-law of February 21, 1912 above referred to."

Your deponent therefore respectfully prays that an order be entered herein requiring the complainant:

1. To make a further and better statement of the nature of the claim and/or claims set forth in the amended complaint by separately stating and numbering the causes of action attempted to be set forth therein.

2. To make a further and better statement of the nature of the claim and/or claims set forth in the amended complaint herein by stating definitely and specifically the ultimate facts showing how it is claimed that the defendants Farland and Reuter caused the proceeds of the sale of the bonds and notes of the Duquesne Gas Corporation beyond the amount of $2,572,989 plus $365,000 (other than the legitimate bankers' commissions for the sale of said bonds

and notes and legitimate expenses of organizaation of said corporation) to be diverted from the Duquesne Gas Corporation as alleged in paragraph "Eleventh" of the amended bill of complaint.

[fol. 30] 3. To make a further and better statement of the nature of the claim and/or claims set forth in the bill herein by stating definitely and specifically the ultimate facts showing how it is claimed that the defendants Furlaud and Reuter caused the proceeds of the sale of the bonds and notes of the Duquesne Gas Corporation, beyond the amount of $2,572,989 plus $365,000 (other than the legitimate bankers' commissions for the sale of said bonds and notes and legitimate expenses of organization of said corporation) to be fraudulently misappropriated as alleged in paragraph "Eleventh" of the amended bill of complaint.

4. To make a further and better statement of the nature of the claim and/or claims set forth in the bill herein by stating definitely and specifically the ultimate facts upon which it is claimed that the defendants Furlaud and Reuter misappropriated and diverted moneys from the proper uses of the said Duquesne Gas Corporation.

The reason why this application is made by order to show cause rather than by the usual notice of motion is that the 20th day of May, 1932, is the last day for the defendant to interpose an answer to the amended bill of complaint herein or to move with respect thereto.

This period will expire before the first possible return date of a motion made in the ordinary course by notice of motion and before the decision of this motion. It is therefore essential that the defendant's time to answer be extended until an opportunity is had for the Court to determine this motion.

Wherefore your deponent respectfully prays that an order be entered herein compelling the complainant to make a [fol. 31] further and better statement of the nature of the claim and/or claims alleged in the amended complaint, as set forth herein; that the defendant's time to answer the complaint herein be extended until twenty days after the determination of this motion and the service of an order with notice of entry thereof upon the solicitors for the defendant, in the event that the motion is determined adversely to the defendant herein, and for such other and

further relief as to the Court may seem just and proper, for all of which no previous application has been made.

Ira W. Hirshfield.

Sworn to before me, this 19th day of May, 1932.

Marion Goodman, Notary Public.

[fol. 32] In United States District Court, Southern District of New York

[Title omitted]

Statement as to Orders to Show Cause of Other Defendants

Orders to show cause were obtained on behalf of the defendants, Maxime H. Furlaud, Byron Corporation and Chaucer Corporation, all dated May 19th, 1932 and signed by the Hon. Francis G. Caffey, one of the Justices of the United States District Court for the Southern District of New York.

The said orders to show cause are similar in all respects to the order to show cause obtained on behalf of the defendant Kingston Corporation, with the exception of changes in pronouns and adjectives required in each particular case.

[fol. 33] In United States District Court, Southern District of New York

[Title omitted]

Statement as to Affidavits of Ira W. Hirshfield as to Orders to Show Cause on Behalf of Other Defendants

Separate affidavits of Ira W. Hirshfield, all sworn to on the 19th day of May, 1932, were submitted in support of the orders to show cause obtained on behalf of the defendants, Maxime H. Furlaud, Byron Corporation, and Chaucer Corporation, respectively.

These affidavits are similar in all respects to the affidavit of Ira W. Hirshfield, sworn to on the 19th day of May, 1932 and submitted in support of the order to show cause ob-

tained on behalf of the defendant, Kingston Corporation, with the exception of such changes in pronouns and adjectives as might have been required in each particular case.

[fol. 34] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF RALPH ROYALL IN OPPOSITION TO MOTION MADE BY DEFENDANTS

STATE OF NEW YORK,
County of New York, ss.:

Ralph Royall, being duly sworn, deposes and says that he is a member of the firm of Ehrich, Royall, Wheeler & Walter, solicitors for the complainant-receiver in the above entitled suit, and is thoroughly familiar with the proceedings heretofore had herein.

This affidavit is made in opposition to the separate motions made by the defendants' Maxime H. Furlaud, Kingston Corporation, Byron Corporation and Chaucer Corporation, for an order under Equity Rule No. 20 requiring the complainant to make a further and better statement of the nature of the complainant's claim.

The original bill of complaint was served herein upon all the defendants excepting the defendant Reuter on the 24th day of March, 1932. On the 12th day of April, 1932, the defendants Byron Corporation and Chaucer Corporation appearing specially by Messrs. Eppstein & Hirshfield as [fol. 35] their solicitors obtained an order requiring the complainant to show cause why an order should not be made quashing the service of the subpoena upon the defendants Chaucer Corporation and Byron Corporation. This motion was argued on the 15th day of April before Judge Coleman who upon that date made an order appointing a Referee to take testimony as to whether or not these two corporations were doing business within the Southern District of New York so as to be amenable to process. Upon the Referee's summons and subpoena duces tecum being served upon one Paul M. Coonrod to appear before the Referee and produce the books of these corporations, their

solicitors filed a general appearance herein on their behalf and thus dispensed with the necessity of appearing before the Referee. Said Coonrod who made the affidavit upon which the motions to quash were based is the Secretary of the defendants Byron Corporation and Chaucer Corporation and is a lawyer in the employ of Messrs. Eppstein & Hirshfield. While the above proceedings were going forward the defendants Maxime H. Furland and Kingston Corporation appeared herein by Messrs. Eppstein & Hirshfield as their solicitors and on the 18th day of April served their answers to the original bill of complaint. The calendar number is 2392.

On being served with the motion papers by the defendants Byron Corporation and Chaucer Corporation upon the motion to quash service upon them, your deponent went to Pittsburgh, Pennsylvania and there obtained the affidavit of one Robert A. McShea, Jr., verified the 16th day of April, 1932, and filed herein on behalf of the complainant in opposition to such motions. Said McShea, who is a certified [fol. 36] public accountant and an accountant of the staff of the Bureau of Statistics of the Public Service Commission of the Commonwealth of Pennsylvania, had been instructed by that Commission to investigate the facts relating to the issuance by the defendants of the securities of Duquesne Gas Corporation, and Mr. McShea set forth in his affidavit certain detailed facts respecting the participation of the defendants Byron Corporation and Chaucer Corporation in the issuance of these securities, and these facts as set forth in such affidavit showed among other things that, to the extent of $850,000 of the moneys received by the defendants out of the securities of Duquesne Gas Corporation sold by them, such moneys had come in the first instance into the hands of the defendants Byron Corporation and Chaucer Corporation. This particular fact had not previously come to the knowledge of the complainant or his solicitors, and a motion was thereupon made upon behalf of the complainant and an order obtained upon the 29th day of April, 1932, permitting the complainant to file and serve the amended bill of complaint herein. The amended bill of complaint was served upon Messrs. Eppstein & Hirshfield upon the 30th day of April, 1932.

Upon the 20th day of May, 1932, the solicitors for the complainant received from Messrs. Eppstein & Hirshfield, the solicitors for the defendants Maxime H. Furland, Kings-

ton Corporation, Byron Corporation and Chaucer Corporation four similar orders to show cause upon similar moving papers for an order requiring complainant to restate his claims under Rule #20 of the Federal Equity Rules and containing an extension of time of all the defendants to answer the amended bill of complaint until ten days after dispositon of the motions.

[fol. 37] The suit is for an accounting and the prayers for relief in the original and amended complaints are identical and the relief asked is that the defendants and each of them be compelled to account to Duquesne Gas Corporation and to complainant as its Receiver for all funds or moneys coming into the hands of them or any of them from the sale of the bonds, notes and shares of stock of Duquesne Gas Corporation.

The amended bill of complaint differs from the original bill of complaint, except for a few slight textual changes, only in that (1) paragraph Twelfth thereof was revised so as specifically to allege that $850,000 of the proceeds of the sale of securities of Duquesne Gas Corporation was in the first instance received by defendants Byron Corporation and Chaucer Corporation; and (2) that paragraph Third was revised so as to allege that the defendants Byron Corporation and Chaucer Corporation were Delaware corporations instead of New York corporations as alleged in the original bill of complaint.

The complaint sets forth in considerable detail the facts surrounding the organization of the defendant Duquesne Gas Corporation and the issuance of its securities; it alleges that the defendants Furlaud and Reuter were the promoters of the corporation; it alleges the various steps that were taken by them in promoting and organizing the corporation and in selling its securities; it alleges that the defendants Kingston Corporation, Chaucer Corporation and Byron Corporation as well as the corporation variously known as Furlaud & Company, Furlaud, Reuter & Company and Winchelsea Holding Corporation (now dissolved) were all of them corporations created by Furlaud and Reuter, of which [fol. 38] they were the owners of all of the capital stock and the officers of all of which were the defendants Furlaud and Reuter or their mere nominees or dummies; it alleges that these various corporations were used by the defendants Furlaud and Reuter in connection with a rather elaborate series of steps in accomplishing the promotion and organi-

zation of the Duquesne Gas Corporation and the sale of its securities and how such corporations were used and what the steps taken were. It is submitted that a reading of the amended bill of complaint will show that, although the proceedings taken by these defendants in diverting and misappropriating the assets of Duquesne Gas Corporation were involved and elaborate, they are clearly set forth in chronological order. It is also submitted that such facts so alleged can bear only the ultimate inference that the defendants stood and stand in a fiduciary relationship to the defendant Duquesne Gas Corporation and that in such relationship they are accountable to the corporation and to its Receiver for all of the moneys coming into their hands or the hands of any of them from the sale of the securities of Duquesne Gas Corporation, and the bill alleges such fiduciary relationship. The bill also sets forth clearly and in detail the amount of the moneys alleged to have come into the hands of the defendants as such fiduciaries and the amount thereof which found its way into the treasury of Duquesne Gas Corporation to which they stood in the fiduciary relationship and the amount wrongfully diverted and misappropriated by the defendants from such corporation which is approximately $2,500,000.

The suit as above stated is a suit for an accounting by persons standing in a fiduciary relationship. The relief flowing from the bill of complaint in a suit such as the [fol. 39] instant one is in the first instance an interlocutory decree for an accounting for which purpose it is requisite to allege and prove only facts and circumstances sufficient to establish the fiduciary relationship and that the fiduciaries have failed to account. The details of the proceedings and steps taken by the fiduciaries in the nature of things await disclosure until the Master is appointed to take the accounts pursuant to the interlocutory decree under Rule 59 when the defendant fiduciaries are required to bring their accounts before the Master under Federal Equity Rule 63 and to set out in detail all the steps and proceedings which they have taken. In this instance the Receiver has been able to obtain considerable detailed information concerning the steps of these defendants as fiduciaries to the corporation in promoting it and organizing it and selling its securities and diverting and misappropriating the proceeds thereof and has thus been able to set out in his bill of complaint such facts and circumstances in consider-

ably more detail than would ordinarily be the case in a suit of this nature.

The motions of the defendants come to this: that in an Equity suit for an accounting the bill of complaint must set forth the details of each and every step of the defaulting fiduciaries. Such a position is directly contrary to the fundamental conceptions underlying a suit of this nature. It is because a person to whom another stands in the relation of fiduciary is presumed not to know or to be able to ascertain the conduct of his fiduciary except as his fiduciary shall account to him that suits for an accounting are in a very separate category in which the procedure has become established that for the purposes of such a suit it is neces- [fol. 40] sary for the complainant to allege and prove only the fiduciary relationship and the failure to account whereupon an interlocutory decree for an accounting is made, requiring the accounting fiduciary to make full disclosure before the Master. They particularize four things: (1) That the separate causes of action should be separately stated and numbered. Manifestly, there is but one cause of action, viz. a cause of action requiring the defendants to account; (2) "How" we claim they "diverted"; (3) "How" we claim they "misappropriated"; (4) "How" we claim they "diverted" and "misappropriated". These last three numbered things are, manifestly, but one thing. We alleged that they diverted and misappropriated the corporation's funds and they now say that we must tell them how. It is not for a fiduciary who is sued for an accounting to require the complainant to set forth the particulars and details of the fiduciary's administration of the fund. It is rather for the fiduciary when once his accountability as such is established to furnish full disclosure before the Master. The gravamen of the suit is the fiduciary relationship and the fiduciaries' resulting accountability.

It is submitted that the motions are without the least merit.

It is also submitted that the motions were made solely for the purpose of delay. Your deponent in refusing the request of the solicitors for the defendants for extensions of time pointed out that the suit was by a Receiver and that it was highly important that the case should be tried before the adjournment of the Court for the summer recess and to the suggestion then made by the Solicitors for the defendants that the case could not be reached before that

[fol. 41] time pointed out that the complainant was entitled to a preference. Your deponent had prepared the necessary papers and was holding them awaiting the receipt of the answers in order that motion could immediately be made to place the case upon the calendar for trial under the preference rules applicable. Defendants' solicitors instead of answering have waited until the last day to apply for and obtain a ten days' extension to answer based upon this wholly unmeritorious motion. It should be noted that two of the defendants, viz. Maxime H. Furlaud and Kingston Corporation, represented by the same solicitors who represent the several defendants, found no difficulty in answering the original complaint which in the particlars now referred to in these motions does not vary in any respect whatsoever from the amended bill of complaint. The nature of the suit, the fact that the complainant is properly entitled to a speedy trial, the facts and circumstances surrounding the proceedings heretofore had and the wholly unmeritorious nature of the motions indicate clearly that the motions are made for the sole purpose of delay.

It is finally submitted that the motions should be denied; that the trial should be preferred and the case placed upon the day calendar in such position as to assure trial before the adjournment of the Court for the summer recess and the defendants required immediately to file their answers to the amended bill of complaint.

Ralph Royall.

Sworn to before me this 23rd day of May, 1932.
Florence Perea, Notary Public.

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTIONS TO REQUIRE COMPLAINANT TO MAKE FURTHER AND BETTER STATEMENT AS TO CLAIM—June 23, 1932.

On reading and filing the four orders to show cause herein, dated May 19, 1932, and the affidavits of Ira W. Hirshfield, sworn to May 19, 1932, annexed to said orders to show cause, and upon all the prior proceedings had

herein, and having heard Eppstein & Hirshfield (by Ira W. Hirshfield, of course) in support of the motions of defendants Maxime H. Furlaud, Chaucer Corporation, Byron Corporation and Kingston Corporation to require the complainant herein to make a further and better statement of [fol. 43] the nature of the claim and/or claims set forth in the amended bill of complaint as set forth in said orders to show cause, and having heard Ehrich, Royall, Wheeler & Walter, solicitors for the complainant herein (by Ralph Royall, of counsel) in opposition to said motions, and due deliberation having been had, and the Court having filed its opinion, dated June 17, 1832,

Now, on motion of Ehrich, Royall, Wheeler & Walter, solicitors for the complainant, it is

Ordered that said motions of defendants Maxime H. Furlaud, Chaucer Corporation, Byron Corporation and Kingston Corporation to require the complainant to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint be and the same hereby are denied, and that said defendants answer said amended bill within ten days after service of a copy of this order.

Francis G. Caffey, U. S. D. J.

[fol. 44] In United States District Court, Southern District of New York

[Title omitted]

Memorandum of Caffey, D. J.

I feel that care should be taken at this stage to avoid a ruling which would become the law of the case (Commercial Union v. Anglo South American Bank, 10 Fed. [2d] 937). I shall therefore not discuss the merits and shall confine myself to what I deem essential for disposition of the four motions.

I think that there is a clear single thread running throughout the Amended Complaint. In consequence, there is no justification for directing separation in the statement of causes of action. I think also that the allegations sufficiently meet the requirements of Equity Rule 25 and that,

at least prior to answer, there is no warrant for compelling a better statement under Rule 20.

Motions denied, with leave to defendants to answer within ten days after service of a copy of the order hereon.

Settle order on one day's notice.

Dated, June 17, 1932.

Francis G. Caffey, U.S. D. J.

[fol. 45] In United States District Court, Southern District of New York

[Title omitted]

Answer of Kingston Corporation

Kingston Corporation, for answer to the amended bill of complaint herein:

1. Admits the allegations of Paragraph "First" of the amended bill of complaint.

2. Denies any knowledge or information sufficient to form a belief as to whether complainant is a resident of the City of Pittsburgh and a resident and citizen of the Commonwealth of Pennsylvania, and admits the other allegations of paragraph "Second" of the amended bill of complaint.

3. With respect to the allegation of paragraph "Fourth" of the amended bill of complaint, defendant denies having information sufficient to form a belief with respect thereto and leaves the complainant to his proof thereof.

[fol. 46] 4. With respect to paragraph "Fifth" of the amended bill of complaint, defendant denies each and every allegation thereof except that it admits that on or about the 18th day of July, 1928, a corporation was organized and existed under the laws of the State of New York named "Furlaud & Company, Inc.", the name of which was later changed to "Furlaud, Reuter & Co., Incorporated" and later changed to "Winchelsea Holding Corporation", a certificate of dissolution of which was filed on the 27th day of October, 1931.

5. With respect to paragraph "Sixth" of the amended bill of complaint, defendant denies each and every allegation thereof except that it admits that Duquesne Gas Corporation was duly incorporated under the laws of the State of Pennsylvania and that it owned and operated natural gas wells and admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused the organization of Duquesne Gas Corporation; that Randolph C. Coleman, McLane Tilton and Frank A. Cabeen, Jr., acted for and on behalf of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc.; and that Otto E. Schuller, Thomas W. Duke, Henry T. Wynn and Charles C. Henderson were all employed by or acted on behalf of Winchelsea Holding Corporation then known as Furlaud & Company, Inc.

6. With reference to paragraph "Seventh" of the amended bill of complaint, defendant denies each and every allegation thereof but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused Duquesne Gas Corporation to authorize a first mortgage of Four million dollars ($4,000,000) securing an issue of [fol. 47] Four million dollars ($4,000,000) of first mortgage bonds of Duquesne Gas Corporation, and caused an indenture of One million dollars ($1,000,000) to be issued covering the issue of One million dollars ($1,000,000) of Convertible 6½% Secured Gold Notes, and caused the issuance of Six hundred and seventy-five thousand (675,000) shares of no par value Common Stock of Duquesne Gas Corporation.

7. With respect to paragraph "Eighth" of the amended bill of complaint, defendant denies each and every allegation contained therein but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., purchased from Duquesne Gas Corporation and others, certain bonds and notes of Duquesne Gas Corporation and resold some of the said bonds and notes to others.

8. With respect to paragraph "Ninth" of the amended bill of complaint, defendant denies each and every allegation contained therein.

9. With respect to paragraph "Tenth" of the amended bill of complaint, defendant denies each and every allega-

tion and alleges that all of the bonds, notes and stock of Duquesne Gas Corporation were issued in consideration of the payment to Duquesne Gas Corporation of sundry sums of money and/or the transfer to it of properties or other things of value of the fair, reasonable and/or appraised value of the amount of the bonds and/or notes issued and that immediately after the issuance of the said bonds, notes and stock Winchelsea Holding Corporation and/or defendants Furlaud, Reuter, Kingston Corporation, Byron Corporation and/or Chaucer Corporation and/or the nominees [fol. 48] of them or of one or more of them were the holders of all of the issued and outstanding stock of the said Duquesne Gas Corporation.

10. With respect to paragraph "Eleventh" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every sale of a bond or note of Duquesne Gas Corporation as alleged in the amended bill of complaint was made for the account of the Seller thereof who was the owner thereof and not for the account of Duquesne Gas Corporation.

11. With respect to paragraph "Twelfth" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every share of stock issued by the Duquesne Gas Corporation was properly issued by the said Duquesne Gas Corporation for a good and valuable consideration, and resold by the person, firm or corporation (or the nominee of the said person, firm or corporation) to whom the stock was originally issued, for the account of that person, firm or corporation and not for the account of Duquesne Gas Corporation.

12. With respect to paragraph "Thirteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

13. With respect to paragraph "Fourteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

14. With respect to paragraph "Fifteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

[fol. 49] 15. With respect to paragraph "Sixteenth" of the amended bill of complaint, defendant denies each and

every allegation thereof except that defendant admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., organized and was (through its nominees) the sole stockholders of Kingston Corporation, that Winchelsea Holding Corporation then known as Furlaud & Company, Inc. purchased from Duquesne Gas Corporation, Two million seven hundred thousand dollars ($2,700,000) of bonds and One million dollars ($1,000,000) of notes at a price of 90 for the bonds and 88 for said notes, and further admits that under date of April 7, 1930 a written paper called "Agreement of Reorganization between Duquesne Gas Corporation and Kingston Corporation of New Jersey" was duly signed and executed, and further admits that Krogg and Halporn were employees of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., and further admits that Kingston Corporation declared a dividend in kind to its stockholders of One Million three hundred thousand dollars ($1,300,000) in face amount of bonds of Duquesne Gas Corporation and Twenty-five thousand (25,000) shares of the capital stock of Duquesne Gas Corporation and further admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., subscribed and paid for One hundred and forty thousand (140,000) shares of stock of Duquesne Gas Corporation and paid therefor at the rate of fifty cents (50c.) per share, and further admits that the said Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., sold the major part of the One million three [fol. 50] hundred thousand dollars ($1,300,000) in face amount of bonds which were received by it from Kingston Corporation.

16. With respect to paragraph "Seventeenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

The defendant, without waiving any of the foregoing defenses and further answering said amended bill of complaint, alleges:

17. Upon information and belief, that the orginal subscribers to the capital stock of Duquesne Gas Corporation and each and every other person (or the person, persons,

firm, firms, corporation or corporations for whom it or they were acting) who, from the inception of Duquesne Gas Corporation until on or about May 15, 1930, was either a stockholder of the said company or a subscriber for stock of said company or in any way otherwise interested in the stock of the company then issued or thereafter to be issued, had full knowledge of the corporate transactions referred to in the amended bill of complaint and of all matters affecting the same and with such knowledge approved the corporate transactions referred to in the amended bill of complaint and from time to time re-elected the directors who had authorized the same and ratified and affirmed said transaction by their acquiescence thereto and that at a meeting of the stockholders of Duquesne Gas Corporation duly held on April 8, 1930, at which all of the issued and outstanding stock of the corporation was present in person or by proxy, all of the acts set forth in the amended bill of complaint [fol. 51] were, by unanimous vote, ratified and confirmed and that the defendants, Furlaud, Reuter, Kingston Corporation, Chaucer Corporation and/or Byron Corporation and/or Winchelsea Holding Corporation and/or their nominees owned and/or controlled, at all pertinent times mentioned in the amended bill of complaint all of the issued, outstanding and/or subscribed stock of Duquesne Gas Corporation.

Wherefore defendant prays that the amended bill of complaint be dismissed and it have such other and further relief as to the Court appears to be just.

Eppstein & Hirshfield, Solicitors for Kingston Corporation, Office & P. O. Address, 521 Fifth Avenue, Borough of Manhattan, City of New York.

(Verified on June 22, 1932, by Maxime H. Furlaud as President of Kinston Corporation.)

[fol. 52] In United States District Court, Southern District of New York

[Title omitted]

Answer of Maxime H. Furlaud

Maxime H. Furlaud, for answer to the amended bill of complaint herein:

1. Admits the allegations of Paragraph "First" of the amended bill of complaint.

2. Denies any knowledge or information sufficient to form a belief as to whether complainant is a resident of the City of Pittsburgh and a resident and citizen of the Commonwealth of Pennsylvania, and admits the other allegations of paragraph "Second" of the amended bill of complaint.

3. With respect to the allegation of paragraph "Fourth" of the amended bill of complaint, defendant denies having information sufficient to form a belief with respect thereto and leaves the complainant to his proof thereof.

[fol. 53] 4. With respect to paragraph "Fifth" of the amended bill of complaint, defendant denies each and every allegation thereof except that he admits that on or about the 18th day of July, 1928, a corporation was organized and existed under the laws of the State of New York named "Furlaud & Company, Inc.", the name of which was later changed to "Furlaud, Reuter & Co., Incorporated" and later changed to "Winchelsea Holding Corporation", a certificate of dissolution of which was filed on the 27th day of October, 1931.

5. With respect to paragraph "Sixth" of the amended bill of complaint, defendant denies each and every allegation thereof except that he admits that Duquesne Gas Corporation was duly incorporated under the laws of the State of Pennsylvania and that it owned and operated natural gas wells and admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc. caused the organization of Duquesne Gas Corporation; that Randolph C. Coleman, McLane Tilton and Frank A. Cabeen, Jr., acted for and on behalf of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc.; and that Otto E. Schuller, Thomas W. Duke, Henry T. Wynn and Charles C. Henderson were all employed by or acted on behalf of Winchelsea Holding Corporation then known as Furlaud & Company, Inc.

6. With reference to paragraph "Seventh" of the amended bill of complaint, defendant denies each and every allegation thereof but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused Duquesne Gas Corporation to authorize a first mortgage of

[fol. 54] Four million dollars ($4,000,000) securing an issue of Four million dollars ($4,000,000) of first mortgage bonds of Duquesne Gas Corporation, and caused an indenture of One million dollars ($1,000,000) to be issued covering the issue of One million dollars ($1,000,000) of Convertible 6½% Secured Gold Notes, and caused the issuance of Six hundred and seventy-five thousand (675,000) shares of no par value Common Stock of Duquesne Gas Corporation.

7. With respect to paragraph "Eighth" of the amended bill of complaint, defendant denies each and every allegation contained therein but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., purchased from Duquesne Gas Corporation and others, certain bonds and notes of Duquesne Gas Corporation and resold some of the said bonds and notes to others.

8. With respect to paragraph "Ninth" of the amended bill of complaint, defendant denies each and every allegation contained therein.

9. With respect to paragraph "Tenth" of the amended bill of complaint, defendant denies each and every allegation and alleges that all of the bonds, notes and stock of Duquesne Gas Corporation were issued in consideration of the payment to Duquesne Gas Corporation of sundry sums of money and/or the transfer to it of properties or other things of value of the fair, reasonable and/or appraised value of the amount of the bonds, and/or notes issued and that immediately after the issuance of the said bonds, notes and stock Winchelsea Holding Corporation and/or de- [fol. 55] fendants Furland, Reuter, Kingston Corporation, Byron Corporation and/or Chaucer Corporation and/or the nominees of them or of one or more of them were the holders of all of the issued and outstanding stock of the said Duquesne Gas Corporation.

10. With respect to paragraph "Eleventh" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every sale of a bond or note of Duquesne Gas Corporation as alleged in the amended bill of complaint was made for the account of the Seller thereof who was the owner thereof and not for the account of Duquesne Gas Corporation.

11. With respect to paragraph "Twelfth" of the amended bill of complaint, defendant denies each and every

allegation thereof and alleges that each and every share of stock issued by the Duquesne Gas Corporation was properly issued by the said Duquesne Gas Corporation for a good and valuable consideration, and resold by the person, firm or corporation (or the nominee of the said person, firm or corporation) to whom the stock was originally issued, for the account of that person, firm or corporation and not for the account of Duquesne Gas Corporation.

12. With respect to paragraph "Thirteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

13. With respect to paragraph "Fourteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

[fol. 56] 14. With respect to paragraph "Fifteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

15. With respect to paragraph "Sixteenth" of the amended bill of complaint, defendant denies each and every allegation thereof except that defendant admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., organized and was (through its nominees) the sole stockholder of Kingston Corporation, that Winchelsea Holding Corporation then known as Furlaud & Company, Inc. purchased from Duquesne Gas Corporation, Two million seven hundred thousand dollars ($2,700,000) of bonds and One million dollars ($1,000,000) of notes at a price of 90 for the bonds and 88 for said notes, and further admits that under date of April 7, 1930, a written paper called "Agreement of Reorganization between Duquesne Gas Corporation and Kingston Corporation of New Jersey" was duly signed and executed, and further admits that Krog and Halporn were employees of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., and further admits that Kingston Corporation declared a dividend in kind to its stockholders of One Million three hundred thousand dollars ($1,300,000) in face amount of bonds of Duquesne Gas Corporation and Twenty-five thousand (25,000) shares of the capital stock of Duquesne Gas Corporation, and further admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., sub-

scribed and paid for One hundred and forty thousand (140,000) shares of stock of Duquesne Gas Corporation and paid therefor at the rate of fifty cents (50c) per share, and further admits that the said Winchelsea Holding Cor-
[fol. 57] poration, then known as Furland & Company, Inc., sold the major part of the One million three hundred thousand dollars ($1,300,000) in face amount of bonds which were received by it from Kingston Corporation.

16. With respect to paragraph "Seventeenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

The defendant, without waiving any of the foregoing defenses and further answering said amended bill of complaint, alleges:

17. Upon information and belief, that the original subscribers to the capital stock of Duquesne Gas Corporation and each and every other person (or the person, persons, firm, firms, corporation or corporations for whom he or they were acting) who, from the inception of Duquesne Gas Corporation until on or about May 15, 1930 was either a stockholder of the said company or a subscriber for stock of said company or in any way otherwise interested in the stock of the company then issued or thereafter to be issued, had full knowledge of the corporate transactions referred to in the amended bill of complaint and of all matters affecting the same and with such knowledge approved the corporate transactions referred to in the amended bill of complaint and from time to time reelected the directors who had authorized the same and ratified and affirmed said transaction by their acquiescence thereto and that at a meeting of the stockholders of Duquesne Gas Corporation duly held on April 8, 1930 at which all of the issued and outstanding stock of the cor-
[fol. 58] poration was present in person or by proxy, all of the acts set forth in the amended bill of complaint were, by unanimous vote, ratified and confirmed and that the defendants, Furland, Reuter, Kingston Corporation, Chaucer Corporation and/or Byron Corporation and/or Winchelsea Holding Corporation and/or their nominees owned and/or controlled, at all pertinent times mentioned in the amended bill of complaint all of the issued, outstanding and/or subscribed stock of Duquesne Gas Corporation.

Wherefore defendant prays that the amended bill of complaint be dismissed and he have such other and further relief as to the Court appears to be just.

Eppstein & Hirshfield, Solicitors for Maxime H. Furlaud, Office & P. O. Address, 521 Fifth Avenue, Borough of Manhattan, City of New York.

(Verified on June 22, 1932, by the defendant Maxime H. Furlaud.)

[fol. 59] In United States District Court, Southern District of New York

[Title omitted]

Answer of Byron Corporation

Byron Corporation, for answer to the amended bill of complaint herein:

1. Admits the allegations of Paragraph "First" of the amended bill of complaint.

2. Denies any knowledge or information sufficient to form a belief as to whether complainant is a resident of the City of Pittsburgh and a resident and citizen of the Commonwealth of Pennsylvania, and admits the other allegations of paragraph "Second" of the amended bill of complaint.

3. With respect to the allegation of paragraph "Fourth" of the amended bill of complaint, defendant denies having information sufficient to form a belief with respect thereto and leaves the complainant to his proof thereof.

[fol. 60] 4. With respect to paragraph "Fifth" of the amended bill of complaint, defendant denies each and every allegation thereof except that he admits that on or about the 18th day of July, 1928, a corporation was organized and existed under the laws of the State of New York named "Furlaud & Company, Inc.", the name of which was later changed to "Furlaud, Reuter & Co., Incorporated" and later changed to "Winchelsea Holding Corporation", a certificate of dissolution of which was filed on the 27th day of October, 1931.

5. With respect to paragraph "Sixth" of the amended bill of complaint, defendant denies each and every allega-

tion thereof except that it admits that Duquesne Gas Corporation was duly incorporated under the laws of the State of Pennsylvania and that it owned and operated natural gas wells and admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc. caused the organization of Duquesne Gas Corporation; that Randolph C. Coleman, McLane Tilton and Frank A. Cabeen, Jr., acted for and on behalf of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc.; that Otto E. Schuller, Thomas W. Duke, Henry T. Wynn and Charles C. Henderson were all employed by or acted on behalf of Winchelsea Holding Corporation then known as Furlaud & Company, Inc.

6. With reference to paragraph "Seventh" of the amended bill of complaint, defendant denies each and every allegation thereof but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused Duquesne Gas Corporation to authorize a first mortgage of [fol. 61] Four million dollars ($4,000,000) securing an issue of Four million dollars ($4,000,000) of first mortgage bonds of Duquesne Gas Corporation, and caused an indenture of One million dollars ($1,000,000) to be issued covering the issue of One million dollars ($1,000,000) of Convertible 6½% Secured Gold Notes, and caused the issuance of Six hundred and seventy-five thousand (675,000) shares of no par value Common stock of Duquesne Gas Corporation.

7. With respect to paragraph "Eighth" of the amended bill of complaint, defendant denies each and every allegation contained therein but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., purchased from Duquesne Gas Corporation and others, certain bonds and notes of Duquesne Gas Corporation and resold some of the said bonds and notes to others.

8. With respect to paragraph "Ninth" of the amended bill of complaint, defendant denies each and every allegation contained therein.

9. With respect to paragraph "Tenth" of the amended bill of complaint, defendant denies each and every allegation and alleges that all of the bonds, notes and stock of Duquesne Gas Corporation were issued in consideration of the payment to Duquesne Gas Corporation of sundry

sums of money and/or the transfer to it of properties or other things of value of the fair, reasonable and/or appraised value of the amount of the bonds and/or notes issued and that immediately after the issuance of the said bonds, notes and stock Winchelsea Holding Corporation and/or defendants Furlaud, Reuter, Kingston Corporation, [fol. 62] Byron Corporation and/or Chaucer Corporation and/or the nominees of them or of one or more of them were the holders of all of the issued and outstanding stock of the said Duquesne Gas Corporation.

10. With respect to paragraph "Eleventh" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every sale of a bond or note of Duquesne Gas Corporation as alleged in the amended bill of complaint was made for the account of the Seller thereof who was the owner thereof and not for the account of Duquesne Gas Corporation.

11. With respect to paragraph "Twelfth" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every share of stock issued by the Duquesne Gas Corporation was properly issued by the said Duquesne Gas Corporation for a good and valuable consideration, and resold by the person, firm or corporation (or the nominee of the said person, firm or corporation) to whom the stock was originally issued, for the account of that person, firm or corporation and not for the account of Duquesne Gas Corporation.

12. With respect to paragraph "Thirteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

13. With respect to paragraph "Fourteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

14. With respect to paragraph "Fifteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

[fol. 63] 15. With respect to paragraph "Sixteenth" of the amended bill of complaint, defendant denies each and every allegation thereof except that defendant admits that Winchelsea Holding Corporation, then known as Furlaud

& Company, Inc. organized and was (through its nominees) the sole stockholder of Kingston Corporation, that Winchelsea Holding Corporation then known as Furlaud & Company, Inc., purchased from Duquesne Gas Corporation, Two million seven hundred thousand dollars ($2,700,000) of bonds and One million dollars ($1,000,000) of notes at a price of 90 for the bonds and 88 for said notes, and further admits that under date of April 7, 1930, a written paper called "Agreement of Reorganization between Duquesne Gas Corporation and Kingston Corporation of New Jersey" was duly signed and executed, and further admits that Krog and Halporn were employees of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., and further admits that Kingston Corporation declared a dividend in kind to its stockholders of One Million three hundred thousand dollars ($1,300,000) in face amount of bonds of Duquesne Gas Corporation and Twenty-five thousand (25,000) shares of the capital stock of Duquesne Gas Corporation, and further admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., subscribed and paid for One hundred and forty thousand (140,000) shares of stock of Duquesne Gas Corporation and paid therefor at the rate of fifty cents (50c) per share, and further admits that the said Winchelsea Holding Corporation, then known as Furlaud & Company, Inc. sold the major part of the One Million three hundred [fol. 64] thousand dollars ($1,300,000) in face amount of bonds which were received by it from Kingston Corporation.

16. With respect to paragraph "Seventeenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

The defendant, without waiving any of the foregoing defenses and further answering said amended bill of complaint, alleges:

17. Upon information and belief, that the original subscribers to the capital stock of Duquesne Gas Corporation and each and every other person (or the person, persons, firm, firms, corporation or corporations for whom it or they were acting) who, from the inception of Duquesne Gas Corporation until on or about May 15, 1930 was either a stockholder of the said company or a subscriber for stock

of said company or in any way otherwise interested in the stock of the company then issued or thereafter to be issued, had full knowledge of the corporate transactions referred to in the amended bill of complaint and of all matters affecting the same and with such knowledge approved the corporate transactions referred to in the amended bill of complaint and from time to time re-elected the directors who had authorized the same and ratified and affirmed said transaction by their acquiescence thereto and that at a meeting of the stockholders of Duquesne Gas Corporation duly held on April 8, 1930 at which all of the issued and outstanding stock of the corporation was present in person or by proxy, all of the acts set forth in the amended bill of complaint were, by unanimous vote, ratified and con-
[fol. 65] firmed and that the defendants, Furland, Reuter, Kingston Corporation, Chaucer Corporation and/or Byron Corporation and/or Winchelsea Holding Corporation and/or their nominees owned and/or controlled, at all pertinent times mentioned in the amended bill of complaint all of the issued, outstanding and/or subscribed stock of Duquesne Gas Corporation.

Wherefore defendant prays that the amended bill of complaint be dismissed and it have such other and further relief as to the Court appears to be just.

Eppstein & Hirshfield, Solicitors for Byron Corporation, Office & P. O. Address, 521 Fifth Avenue, Borough of Manhattan, New York City.

(Verified on July 2, 1932, by Byron Corporation, by Paul M. Coonrod, Secretary.)

[fol. 66] In United States District Court, Southern District of New York

[Title omitted]

Answer of Chaucer Corporation

Chaucer Corporation, for answer to the amended bill of complaint herein:

1. Admits the allegations of Paragraph "First" of the amended bill of complaint.

2. Denies any knowledge or information sufficient to form a belief as to whether complainant is a resident of the City of Pittsburgh and a resident and citizen of the Commonwealth of Pennsylvania, and admits the other allegations of paragraph "Second" of the amended bill of complaint.

3. With respect to the allegation of paragraph "Fourth" of the amended bill of complaint, defendant denies having information sufficient to form a belief with respect thereto and leaves the complainant to his proof thereof.

[fol. 67] 4. With respect to paragraph "Fifth" of the amended bill of complaint, defendant denies each and every allegation thereof except that it admits that on or about the 18th day of July, 1928, a corporation was organized and existed under the laws of the State of New York named "Furlaud & Company, Inc.", the name of which was later changed to "Furlaud, Reuter & Co., Incorporated" and later changed to "Winchelsea Holding Corporation", a certificate of dissolution of which was filed on the 27th day of October, 1931.

5. With respect to paragraph "Sixth" of the amended bill of complaint, defendant denies each and every allegation thereof except that it admits that Duquesne Gas Corporation was duly incorporated under the laws of the State of Pennsylvania and that it owned and operated natural gas wells and admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused the organization of Duquesne Gas Corporation; that Randolph C. Coleman, McLane Tilton and Frank A. Cabeen, Jr., acted for and on behalf of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc.; and that Otto E. Schuller, Thomas W. Duke, Henry T. Wynn and Charles C. Henderson were all employed by or acted on behalf of Winchelsea Holding Corporation then known as Furlaud & Company, Inc.

6. With reference to paragraph "Seventh" of the amended bill of complaint, defendant denies each and every allegation thereof but admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., caused Duquesne Gas Corporation to authorize a first mortgage [fol. 68] of Four million dollars ($4,000,000) securing an issue of Four million dollars ($4,000,000) of first mortgage

bonds of Duquesne Gas Corporation, and caused an indenture of One million dollars ($1,000,000) to be issued covering the issue of One million dollars ($1,000,000) of Convertible 6½% Secured Gold Notes, and caused the issuance of Six hundred and seventy five thousand (675,000) shares of no par value Common Stock of Duquesne Gas Corporation.

7. With respect to paragraph "Eighth" of the amended bill of complaint, defendant denies each and every allegation contained therein but admits that Winchelsea Holding Corporation, then known as Furland & Company, Inc., purchased from Duquesne Gas Corporation and others, certain bonds and notes of Duquesne Gas Corporation and resold some of the said bonds and notes to others.

8. With respect to paragraph "Ninth" of the amended bill of complaint, defendant denies each and every allegation contained therein.

9. With respect to paragraph "Tenth" of the amended bill of complaint, defendant denies each and every allegation and alleges that all of the bonds, notes and stock of Duquesne Gas Corporation were issued in consideration of the payment to Duquesne Gas Corporation of sundry sums of money and/or the transfer to it of properties or other things of value of the fair, reasonable and/or appraised value of the amount of the bonds and/or notes issued and that immediately after the issuance of the said bonds, notes and stock Winchelsea Holding Corporation and/or defend- [fol. 69] ants Furland, Reuter, Kingston Corporation, Byron Corporation and/or Chaucer Corporation and/or the nominees of them or of one or more of them were the holders of all of the issued and outstanding stock of the said Duquesne Gas Corporation.

10. With respect to paragraph "Eleventh" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every sale of a bond or note of Duquesne Gas Corporation as alleged in the amended bill of complaint was made for the account of the Seller thereof who was the owner thereof and not for the account of Duquesne Gas Corporation.

11. With respect to paragraph "Twelfth" of the amended bill of complaint, defendant denies each and every allegation thereof and alleges that each and every share of stock

issued by the Duquesne Gas Corporation was properly issued by the said Duquesne Gas Corporation for a good and valuable consideration, and resold by the person, firm or corporation (or the nominee of the said person, firm or corporation) to whom the stock was originally issued, for the account of that person, firm or corporation and not for the account of Duquesne Gas Corporation.

12. With respect to paragraph "Thirteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

13. With respect to paragraph "Fourteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

[fol. 70] 14. With respect to paragraph "Fifteenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

15. With respect to paragraph "Sixteenth" of the amended bill of complaint, defendant denies each and every allegation thereof except that defendant admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., organized and was (through its nominees) the sole stockholders of Kingston Corporation, that Winchelsea Holding Corporation then known as Furlaud & Company, Inc., purchased from Duquesne Gas Corporation, Two million seven hundred thousand dollars ($2,700,000) of bonds and One million dollars ($1,000,000) of notes at a price of 90 for the bonds and 88 for said notes, and further admits that under date of April 7, 1930, a written paper called "Agreement of Reorganization between Duquesne Gas Corporation, then known as Furlaud & Company, Inc., and furduly signed and executed, and further admits that Krog and Halporn were employees of Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., and further admits that Kingston Corporation declared a dividend in kind to its stockholders of One million three hundred thousand dollars ($1,300,000) in face amount of bonds of Duquesne Gas Corporation and Twenty-five thousand (25,000) shares of the capital stock of Duquesne Gas Corporation, and further admits that Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., subscribed and paid for One hundred and forty thousand

(140,000) shares of stock of Duquesne Gas Corporation and paid therefor at the rate of fifty cents (50¢) per share, and [fol. 71] further admits that the said Winchelsea Holding Corporation, then known as Furlaud & Company, Inc., sold the major part of the One million three hundred thousand dollars ($1,300,000) in face amount of bonds which were received by it from Kingston Corporation.

16. With respect to paragraph "Seventeenth" of the amended bill of complaint, defendant denies each and every allegation thereof.

The defendant, without waiving any of the foregoing defenses and further answering said amended bill of complaint, alleges:

17. Upon information and belief, that the original subscribers to the capital stock of Duquesne Gas Corporation and each and every other person (or the person, persons, firm, firms, corporation or corporations for whom it or they were acting), who, from the inception of Duquesne Gas Corporation until on or about May 15, 1930, was either a stockholder of the said company or a subscriber for stock of said company or in any way otherwise interested in the stock of the company then issued or thereafter to be issued, had full knowledge of the corporate transactions referred to in the amended bill of complaint and of all matters affecting the same and with such knowledge approved the corporate transactions referred to in the amended bill of complaint and from time to time re-elected the directors who had authorized the same and ratified and affirmed said transaction by their acquiescence thereto and that at a meeting of the stockholders of Duquesne Gas Corporation duly held on April 8, 1930, at which all of the issued and outstand-[fol. 72] ing stock of the corporation was present in person or by proxy, all of the acts set forth in the amended bill of complaint were, by unanimous vote, ratified and confirmed and that the defendants, Furlaud, Reuter, Kingston Corporation, Chaucer Corporation and/or Byron Corporation and/or Winchelsea Holding Corporation and/or their nominees owned and/or controlled, at all pertinent times mentioned in the amended bill of complaint all of the issued, outstanding and/or subscribed stock of Duquesne Gas Corporation.